CONCLUSION

- STREETS NEED PROTECTION
  - pavement mitigation fee
  - new pavement repair policy
- SHOULD YOU AGREE IN PRINCIPLE
  - meet with the community and business sectors
  - develop a final proposal
  - return with proposal in the spring of 1996

SECTION 8

PUBLIC UTILITIES COMMISSION NEGATIVE DECLARATION

PUBLIC UTILITIES COMMISSION NEGATIVE DECLARATION SUMMARY

The Public Utilities Commission recently approved a mitigated negative declaration for deregulation of telecommunications in California. This decision enables local telecommunications companies to compete for local exchange service. Sixty-six companies have submitted petitions to compete in this market in California. Of the 66 companies, 40 companies propose to use their own facilities in providing local telephone service. The remaining 26 companies are proposing resale-based services only.

Although not all of these companies will operate facilities in Anaheim, the approval does not limit the geographic areas of the companies. It is anticipated that a number of companies will install telecommunication facilities in Anaheim. San Diego currently has the telecommunication facilities of more than ten different companies within their streets.

One important finding of the mitigated negative declaration recognizes the adverse impact of numerous excavations on street pavement. The mitigated negative declaration states "Uncoordinated efforts may also adversely impact the quality and longevity of public street maintenance because numerous excavation activity depreciates the life of the surface pavement." In order to mitigate this impact, the Public Utilities Commission adopted a mitigation measure which requires the petitioners to coordinate with each other and the local agencies to limit the number of street cuts.

ALJ/TRP/tcg

Mailed

DEC 22 1995

Decision 95-12-057 December 20, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	R.95-04-043
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044

I N D E X

LIST OF APPENDICES

O P I N I O N

I. Introduction

By this decision, we take another significant step forward toward our ultimate goal of instituting a competitive market for telecommunications services for all Californians. As outlined herein, we approve the petitions of the competitive local carriers (CLCs) set forth in Appendix A for authority to offer facilities-based competitive local exchange service, and intra-LATA service for those petitioners that requested that authority, within prescribed service territories subject to our adopted interim rules.

We are encouraged by the diversity and number of carriers who have expressed an interest in competing in the local exchange market. With the approval of petitions we grant today, we look forward to the rapid development of a robust and competitive market for local exchange services.

As directed in D.95-07-054, prospective CLCs were to file petitions for authority by September 1, 1995, to enable us to act upon and approve them in time to allow local exchange competition for facilities-based CLCs to begin by January 1, 1996.
As explained in D.95-07-054, we shall administer the certification process for CLCs using an approach similar to that of I.92-04-008 in which we extended authority to intraLATA toll entrants. In that proceeding, we opened a docket to handle certification of the more than 100 petitioners who sought expanded authority to offer intraLATA toll services. They received authority before January 1, 1995, but were not authorized to begin offering service until that date. In similar fashion, we are using the investigation docket of this proceeding to administer the certification of all of the eligible CLC petitions which were filed by September 1, 1995. As explained in D.95-07-054, the CLC petitions are to be processed and

approved in two consolidated batches. The first batch of eligible petitions, representing facilities-based CLCs, will be approved in this decision for authority to begin offering competitive local exchange service effective January 1, 1996. Those facilities-based CLCs who met the September 1, 1995, filing date but who have not yet met the eligibility requirements for certification will be added to the pending group of petitions seeking CLC resale authority, which are scheduled for certification by March 1, 1996 if they meet the eligibility requirements by that time. All filings for certification after the September 1, 1995 deadline will be treated as routine applications for authority and will be processed individually, rather than in batches, their decisions being issued commencing after March 1, 1996.

The California Public Utilities Commission (Commission), as the lead agency under the California Environmental Quality Act (CEQA) in this matter, finds that the proposed projects for competitive local exchange service, incorporating mitigation measures agreed to by the CLCs, have no potential to cause significant adverse effects on the environment.

Pursuant to this decision, we shall authorize 31 companies to provide facilities-based local exchange service within the service territories of Pacific Bell (Pacific) and GTE California (GTEC).

II. Summary of Petitions Filed

On September 1, 1995, petitions were filed by 66 CLCs seeking authority to enter the local exchange market. The 66 petitioners include cable television companies, cellular companies, long distance service providers, and various other telecommunications companies, including some that specialize in transporting data. Also among the petitioners are Pacific and GTEC

each seeking authority to compete in each other's service territory.

Forty of the 66 petitions seek authority to offer facilities-based service. The remaining 26 seek authority only to offer resale service using the facilities of either Pacific or GTEC, or other carriers. For those petitioners who seek authority for both facilities-based and resale service who are included in the Appendix A listing, we shall grant authority only for facilities-based service at this time. We shall act upon the remaining request for resale authority according to the adopted schedule for initiating resale competition by March 1, 1996. Accordingly, in this decision, we address only the 40 petitions which seek facilities-based authority effective January 1, 1996, in accordance with the schedule set forth in D.95-07-054. Based upon our review, we find that 31 of the 40 petitions meet our stated criteria for certification as competitive local carriers and, accordingly, grant them CPCN authority effective January 1, 1996.

No protests to the petitions were received, but on September 18, 1995, the Division of Ratepayer Advocates (DRA) filed a response to the petitions of Pacific and GTEC. In its filing DRA supports Pacific and GTEC's requests to provide service within each other's territory. However, DRA observed that we cannot authorize Pacific and GTEC to provide Category II services in each other's territory until we modify D.94-09-065 to remove the prohibition on LEC-on-LEC competition for these services. DRA recommends that the Commission be clear as to which services the companies are able to provide under the authority granted in this decision.

III. Summary of Review Process

A. General Review

The CLC petitions have been reviewed for compliance with the certification and entry interim rules adopted in Appendices A and B of D.95-07-054. Consistent with our goal of promoting a competitive market as rapidly as possible, we are granting authority to all CLCs who have met the certification and entry requirements set forth in our interim rules. The purpose of the rules is to be disciplined enough to protect the public against unqualified or unscrupulous carriers, but to be liberal enough to encourage the entry of a large number of CLC providers to promote the rapid growth of competition.

We conducted a review of the past record of the petitioners who are already certificated for other services to determine their fitness to offer local exchange service. A review of the complaint histories for some of the certificated carriers revealed that a few companies had significantly higher than average ratios of complaints to revenues. Some of those companies with the higher than average complaint histories have been accused of slamming. If the allegations of slamming against these companies are proven, we will take appropriate action at that time.

This Commission is on record that it will impose severe sanctions on any company engaged in slamming activities. We want to make it very clear that we intend to prevent the emergence of the practice of slamming in California's newly competitive local exchange market. We will be vigilant and respond swiftly to any occurrences we find. As a result of this decision, 31 competitive local carriers (CLCs) are poised to enter the local exchange market. Those companies will be operating in a new environment where slamming will change a customer's dial tone provider, which could mean that a customer has a lesser grade of service or perhaps no service at all. We put these competitive local carriers on notice that we will be monitoring slamming complaints filed against

them and intend to take whatever steps are necessary to ensure compliance with applicable state law and our own rules against slamming, including revocation of a noncompliant company's operating authority.

Petitioners had to demonstrate that they possess the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based local exchange service. As prescribed in Rule 4.B.(1), facilities-based CLCs must demonstrate that they possess a minimum of $100,000 in cash or cash-equivalent resources, as defined in the rule. Petitioners were also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054.

CLC petitioners were also given further guidance regarding the requirements for CLC petitions through issuance of an ALJ ruling dated August 17, 1995. Petitioners were notified by letter during the week of November 13, 1995 regarding deficiencies in their filings, and were given 15 days in which to file corrections. Commonly encountered deficiencies included tariffs which were unclear or internally inconsistent, failure to provide facility location maps or to define the proposed local calling area, or inconsistency with our adopted interim rules. Corrections were submitted by petitioners during the weeks of November 27 and December 4 in response to the deficiency letters. Some companies, which are discussed below, did not submit their corrections within the established time frame. We have reviewed the filings and the corrections which were submitted in response to the deficiency letters.

Based upon our review, we conclude that 31 of the 40 facilities-based petitioners have satisfactorily complied with our certification requirements for entry and accordingly grant these petitioners CPCN authority to offer local exchange service and, where requested, intraLATA authority, effective January 1, 1996. The list of petitioners eligible to commence service January 1, 1996, is set forth in Appendix A. Unless otherwise noted,

petitioners will be authorized to begin service upon the filing of tariffs in accordance with the terms and conditions set forth in the proposed tariffs filed with their petitions or, as applicable, with their filed corrections of deficiencies. In the case of certain CLCs as identified in Appendix F, the authority granted is conditional upon the CLC further amending its filed tariff as described in Appendix F.

B. California Environmental Quality Act (CEQA) Review

We have also reviewed the petitions for compliance with CEQA. CEQA requires the Commission to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 of the Commission's Rules requires the proponent of any project subject to Commission approval to submit with the petition for approval of such project an environmental assessment which is referred to as a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's Initial Study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

Upon review of the petitioners' filed PEAs, the Commission Advisory and Compliance Division (CACD) performed an Initial Study of the expected significance of the environmental impacts of petitioners' projects. The scope of review was limited to the 40 petitions seeking to offer facilities-based service, which means that the petitioners would use their own facilities in providing local telephone service. The remaining 26 resale petitioners would not use any facilities of their own, but would merely rely on other carriers' facilities to offer resale service.

Based on its assessment of the 40 facilities-based petitions, CACD prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners'

projects and their potential environmental effects. The Negative Declaration prepared by CACD is considered a mitigated Negative Declaration. This means that although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level have been agreed to by the petitioners. (Pub. Res. Code § 21080(c)(2).)

On October 18, 1995, the Negative Declaration and Initial Study was sent to various city and county planning agencies, as well as public libraries throughout the state for review and comment. CACD prepared a public notice which announced the preparation of the draft negative declaration, the locations where it was available for review, and the deadline for written comments. The public notice was advertised for two successive weeks in 55 newspapers throughout the state. The draft Negative Declaration was also submitted to the Governor's Office of Planning and Research where it was circulated to affected state agencies for review and comment. Public comments were received by November 20, 1995.

All public comments were reviewed and answered. CACD then finalized the Negative Declaration covering all 40 facilities-based petitions. Comments and responses are attached as Subappendix C to the Final Negative Declaration (Appendix D).

Based upon our Initial Study and the public comments, it has been determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects will not have potentially significant environmental effects. Accordingly, we shall approve the Negative Declaration as prepared by CACD including CACD's proposed Mitigation Monitoring Plan (attached as Subappendix D to the Final Negative Declaration) which will ensure that the Mitigation Measures listed by CACD will be followed and implemented. The approved Negative Declaration, including CACD's findings regarding potential environmental impacts and proposed mitigation measures is set forth in Appendix D.

One petitioner, Info-Tech Communications (Info-Tech), has submitted a Final Environmental Impact Report (FEIR) as an amendment to its petition for a CPCN. The FEIR, certified by the City of Lincoln in April 1994, mitigates the environmental impacts regarding Info-Tech's proposed project in the Twelve Bridges community development in the City of Lincoln.

Info-Tech submits that the FEIR sufficiently addresses the environmental concerns of its initial project for local telephone service, and that the Commission may rely on the FEIR as a Responsible Agency pursuant to CEQA.

Info-Tech has petitioned the Commission to provide competitive local telephone service throughout the territories opened in D.95-07-054. Its intention at this time is to begin service in the City of Lincoln, but it may originate services in other parts of the state at a later date. While the FEIR may include some[1] assessment of Info-Tech's initial project in the city of Lincoln, the FEIR does not assess the impacts of Info-Tech's intent to compete statewide. The Commission's Final Negative Declaration is an assessment of the environmental impacts of every petitioner's intent to compete statewide, and therefore is applicable to all petitioners, including Info-Tech. The Commission's Final Negative Declaration cannot be replaced by, or superceded by the FEIR as long as Info-Tech intends to compete statewide.

Therefore, while Info-Tech is required to abide by the mitigation measures contained in the FEIR, it will also be required to comply with the measures of the Final Negative Declaration adopted in this order.

1 It is unclear from the documents that Infotech provided the Commission, the degree to which Infotech's service was evaluated in Lincoln's FEIR.

IV. Special Considerations

Some of the petitions filed warrant individual comment. Included in that group are Pacific and GTEC who filed to provide service in each other's territory, as well as other companies filing for facilities-based authority who are not being certificated at this time.

A. Pacific and GTEC's Petitions

While Pacific and GTEC filed for CLC authority to compete in each other's territories on September 1, 1995, two procedural matters had to be disposed of before their requests for CLC authority could be granted. We had to amend D.94-09-065, the Implementation Rate Design (IRD) decision to allow for LEC-to-LEC competition for Category II services. Also, we had to act on applications filed by Pacific and GTEC for CPCNs to provide intraLATA services in each other's territory (A.95-09-004--GTEC and A.95-09-021--Pacific).

GTEC filed a Petition to Modify Conclusion of Law (COL) 8 of D.94-09-065, to eliminate the ban on LEC-to-LEC competition in California. GTEC indicates that due to the issuance of this Commission's decision authorizing facilities-based local competition commencing January 1, 1996, the time has come to remove this ban. A separate decision scheduled for our vote today would grant GTEC's request and allow the two LECs to compete. Also today in two separate decisions, we will act on Pacific and GTEC's applications for intraLATA authority to provide service in each other's territory. Pacific and GTEC will be able to provide local exchange service in each other's territory as a CLC under the terms outlined in their respective petitions as amended by their filed deficiency corrections only after we have disposed of the procedural matters described above, and after this decision becomes effective.

B. Communications TeleSystems International

Communications TeleSystems International (CTS) timely filed a petition requesting authority to operate as both a facilities-based and resale CLC. CTS currently holds a CPCN from this Commission (U-5273-C) to operate as an inter-exchange carrier. In our review of the complaint histories of petitioners currently certificated by this Commission, we found that CTS had a ratio of complaints to revenue[2] that was ten times greater than any facilities-based carrier being certificated in this decision. A review of the nature of the complaints disclosed that 75% of all complaints involved items not ordered and 37% of the total related to slamming complaints. As we stated clearly elsewhere in this decision, we will not tolerate slamming, and will use the force of state law and our own rules to eliminate the practice.

We have been advised that our Safety and Enforcement (S&E) staff are in the process of conducting an investigation into the business practices of CTS and are reviewing allegations of abusive marketing and business practices. S&E has stated its intention to file a protest prior to January 10, 1996, to CTS being authorized to provide local exchange service. After review of the issues raised in S&E's protest, we will determine whether CTS' complaint history is an impediment to our granting the company a CPCN to provide local exchange service.

C. Cellular Radio Service Providers

Four facilities-based cellular carriers registered by this Commission filed for both facilities-based and resale CLC authority. The four are: Bakersfield Cellular Telephone Company

2 The complaint data was derived from complaints filed with the Commission's Consumer Affairs Branch for 1994-95 and the revenues used for the denominator were obtained from 1994 survey data compiled by the Commission Advisory and Compliance Division.

(U-3017-C), Cellular 2000 (U-3037-C), Mammoth Cellular, Inc. (U-3025-C), and SLO Cellular, Inc. (U-3044-C). In addition, Unitel Communications, a Limited Liability Company which, according to its Petition, "is commonly controlled with Santa Cruz Cellular Telephone, Inc. (U-3019-C)" (Petition, pp 1-2) filed for both facilities-based and resale authority. The tariffs filed by the five companies did not describe the specific service the companies intended to provide.

As determined in D.95-10-032, the issuance of a CPCN for a cellular carrier, where found necessary, is now deemed to be a ministerial act. We stated in that decision that where a CPCN is required, the Executive Director of the Commission, or his delegee, would promptly issue a CPCN to any cellular provider that does not have one, and has made the initial Wireless Registration Identification filing as required by D.94-10-031. This CPCN confirms the carrier's authority to provide those cellular services licensed by the FCC. Accordingly, the process of issuing CPCNs for cellular providers is distinctly different from the process outlined herein for issuing CPCNs for CLC authority to offer competitive local exchange service.

The petitions of the above-referenced cellular providers for CPCN authority to enter the local exchange market raise questions regarding exactly what, if any, additional authority the cellular providers need or are seeking beyond that which they already possess. The cellular petitioners have failed to provide sufficient explanation in their requests for authority to permit us to discern whether they intend merely to continue to provide their existing cellular service in competition with other CLCs and LECs, whether they are seeking to construct separate facilities and to use a separate technology distinct from the cellular service they already offer or to use some hybrid technology which relies, in part, on cellular

The petitioners are directed to supplement their petition filings with additional information describing exactly what facilities, if any, beyond their existing cellular facilities they intend to use for competing in the local exchange market and the specific services they intend to provide. If petitioners merely intend to continue as cellular providers and compete for customers who may consider cellular as a substitute for service from a CLC, then it is not clear to us that the cellular provider is entitled to any additional authority for that purpose. Cellular providers already are able to offer competitive service on this basis. If the cellular petitioners believe that they either need or desire to come under the jurisdictional authority applicable to CLCs within their existing role as cellular providers, we shall permit them to file briefs addressing the legal issues involved in determining the relationship between our ministerial jurisdiction over cellular CPCN authority and the jurisdiction applicable to CLCs as outlined in this rulemaking. In particular, such briefs should address the LECs' obligations to offer cellular providers interim bill and keep provisions established for CLCs and how this relates to their existing interconnection contracts.

In order to provide all parties with an interest in this issue with an opportunity to file briefs, we shall serve a copy of this order on the service list in I.93-12-007, the Commission's Wireless Investigation. If the cellular petitioners, or any other parties of record to this proceeding or to I.93-12-007, intend to file such briefs, they shall do so on or before January 15, 1996.

If, on the other hand, the cellular providers intend to offer a new form of service using wireline technology, then they must clarify this distinction in their supplemental filings. Upon receipt of this supplemental filing from the cellular petitioners, we are prepared to promptly review the new information and, if they otherwise meet our CLC eligibility requirements, we will reconsider

approving their petitions, extending to them the opportunity to enter into a separate interconnection agreement with the LECs and to receive bill and keep treatment for their separate service.

We shall determine what further appropriate action to take with respect to the cellular petitions following receipt of the supplemental filings and/or briefs.

D. **U.S. Long Distance, Inc. (U-5485-C)**

In its Petition, U.S. Long Distance (USLD) requested authority to provide local exchange service on a resale and facilities-based basis. However, USLD's petition included the following statement: "Applicant furthermore seeks authority to provide facilities-based local services, at which time the Applicant intends to lease facilities from the aforementioned LECs or any other authorized and qualified facilities-based provider." (Petition at 4.) In discussions with staff, USLD indicated that it does not intend to use any of its own facilities to offer facilities-based local exchange service. The definition of a facilities-based CLC in Appendix A of D.95-07-054 requires that CLCs "directly own, control, operate, or manage conduits, ducts, poles, wires...in connection with or to facilitate communications within the local exchange portion of the public switched network." (mimeo., Appendix A at 3.) Since USLD intends to lease facilities to provide service, and does not directly own, control or operate any of its own facilities for the provision of local exchange service, the company is appropriately classified as a CLC reseller. USLD's petition for authority will be addressed in February 1996 with those of other CLC resellers.

E. **Caribbean Telephone and Telegraph (Caribbean) and Venture Technologies Group dba Allegro Communications (Venture)**

Caribbean and Venture both made timely filing of their petitions for local exchange authority. Commission staff reviewed the companies' petitions and sent a deficiency letter to each

company on November 13, 1995. In a response addressed to the Docket Office on November 27, 1995, Venture requested an extension of 30 additional calendar days, until December 29, 1995, to respond. Venture went on to say that it does not intend to offer facilities-based services during 1996 and expressed its intent to amend its petition to reflect that change.

Caribbean sent a letter to CACD on November 27, 1995 transmitting a motion for an extension of time to correct its filing. Caribbean asked that its petition be held for the March 1996 approval cycle.

We approve Caribbean and Venture's request for additional time to file corrections to their filings and will consider their petitions with the reseller group to be certificated in February 1996. We will require the companies to file their corrections by January 15, 1996.

F. **Falcon Holding Group, L.P.**

Falcon Holding Group, L.P. (Falcon) did not timely file its Petition by 5:00 p.m. on September 1, 1995. Falcon's petition was served on all parties on September 1, 1995, but Falcon did not file its petition with the Docket Office until September 5, 1995.

On October 2, 1995, Falcon moved for leave to late-file its petition, to have a petition number assigned, and for its petition to be treated as if it were timely filed.

Ordering Paragraph 2 of D.95-07-054 is very clear about the timetable established for filing petitions for CLC authority:

> "If prospective competitive local carriers wish to obtain approval of a certificate of public convenience and necessity (CPCN) prior to the January 1, 1996 and March 1, 1996 dates for implementation of facilities based and bundled resale based competition, respectively, they shall file on or before September 1, 1995, a petition in the investigation portion of this proceeding..."

The schedule developed for this proceeding was set to enable us to meet our self-imposed deadline of opening the local exchange market to competitors by January 1, 1996. We recognized at the time that our schedule was an ambitious one, with no room for slippage in the schedule if we were to achieve our goal. Falcon's motion for acceptance of its late-filed submittal came more than a month after the September 1, 1995, filing date, and staff's review of the petitions was well underway. We see no reason to reward Falcon for its late filing. Falcon's October 2, 1995, Motion is denied. Falcon's filing will be treated as any other application for CLC authority filed after September 1, 1995, and will be processed as expeditiously as possible, but outside the petition process established in D.95-07-054.

V. Summary of Required Tariff Changes

Petitioners listed in Appendix A are ordered to file compliance tariffs, which comply with the requirements outlined in the deficiency letters issued by CACD and subsequent ALJ Rulings issued on November 16 and November 21, 1995. Petitioners may not make any changes to their tariffs, other than those listed in the deficiency letters issued by CACD, or as ordered in this decision.

The following tariff changes must be incorporated into the compliance filings made by all facilities-based carriers:

1. Two of the surcharges collected by telecommunications carriers will change effective January 1, 1996. The Universal Lifeline Telephone Service (ULTS) surcharge was increased from 3% to 3.2% of all intrastate services in Resolution T-15799 dated November 21, 1995. The Deaf Equipment Acquisition Fund (DEAF) Surcharge was increased from 0.3% to 0.36%, effective January 1, 1996, in Resolution T-15801 on October 5, 1995. Both changes must be reflected in the compliance tariff filings

2. CACD conducted a workshop on October 18-19, 1995 to discuss how the deaf and disabled equipment distribution program would operate in an environment of multiple local exchange service providers. The December 11, 1995 workshop report prepared by CACD includes the recommendation that, in the short term, CLCs can contract with one of the incumbent providers to offer equipment and services to eligible deaf and disabled customers. CLCs are to amend their tariffs to state which of the following incumbent providers they intend to use to administer the program: Pacific, GTEC, the California Telephone Association (CTA) or Thomson Consulting which performs program functions for CTA.

Staff's review of tariff corrections filed in response to deficiency letters showed that some deficiencies have not been fully corrected. Appendix F includes a list of specific deficiencies, some generally applicable to all petitioners, and others, by company, which must be corrected as part of each petitioner's tariff compliance filing on or before December 27, 1995.

VI. Review of Limitations of Liability Provisions

The consumer protection rules in Appendix B of D.95-07-054 included Rule 13 relating to the liability of the CLC. Rule 13 reads as follows:

> "The CLC shall not be liable for any failure of performance due to causes beyond its control, including, without limitation to, acts of God, fires, floods or other catastrophes, national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppages or other labor difficulties, and any order, regulation or other action of any governing authority or agency thereof." (Appendix B at 12.)

This is the standard force majeure language typically found in contracts. The consumer protection rules have no other references to limitations on the liability of the CLCs.

Our review of the limitation of liability provisions of draft tariffs submitted by petitioners revealed that many of the petitions included liability provisions that were substantially more restrictive than the language of Rule 13. All of the deficiency letters mailed out included a statement that CLC limitation of liability provisions were still being reviewed, and that CLCs would be notified at a later date regarding any changes required to be made to those tariffs.

Following is an illustrative sample of a typical liability provision which is included in Viacom Communications, Inc.'s petition:

> "The liability of the Company for damages arising out of the furnishing of these services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts of commission or omission, shall be limited to the extension of allowances for interruption. The extension of such allowances for interruption shall be the sole remedy of the Customer or authorized user and the sole liability of the Company. The Company will not be liable for any special, consequential, exemplary or punitive damages a Customer may suffer, whether or not caused by the intentional acts or omissions or negligence of the Company's employees or agents." (Viacom's Petition, Original Sheet No. 72-T.)

This and similar provisions found in the petitions filed by other companies raised the question as to the degree of tariff protection from liability that is appropriate in a competitive marketplace. Certainly a totally unregulated company can, to the extent allowed by law, craft any limits to its liability that it feels are necessary for its protection. However, the situation is

somewhat different for tariff language for regulated entities. Once the provisions are in the tariff, that tariff rule cannot be reviewed, reversed or annulled by any court except the state Supreme Court, except as provided in Rule 9 of the Commission's Rules. Therefore, unlike customers of unregulated companies, customers of regulated utilities who institute actions for damages in superior court cannot challenge the tariff provisions which limit liability.

In reviewing the limitation of liability provisions of LEC tariffs, we found the provisions to be much less restrictive than those provided in most CLC petitions. Certainly LECs have routinely included limits on liability in their tariffs, under the theory that a public utility which is strictly regulated should be allowed to limit its liability. If that were not the case, captive ratepayers could end up paying the costs of settlements in higher rates. However, in the case of CLC tariffs, we are not dealing with monopoly public utilities which are heavily regulated by this Commission. We are not disposed to approve limitation of liability provisions in CLCs' tariffs that are more restrictive than those of the incumbent LECs. This is one area where symmetrical provisions are desirable. Therefore, in this decision we will order CLCs to replace the current limitation of liability provisions in the draft tariffs they filed as part of the petition process with either Pacific or GTEC's limitation of liability provisions, as shown in Appendices B and C.

VII. Compliance with FCC Order Regarding Calling Party Number

Since our July Order, the FCC has issued its Caller ID Reconsideration Order ("Recon Order") requiring all SS7-capable local exchange carriers to pass calling party number (CPN) to interconnecting carriers starting December 1, 1995. The FCC extended the effective date to June 1, 1996 for California carriers. The Recon Order also provides that carriers with a

compelling need for more time may seek and obtain a waiver from the FCC.

The Recon Order is consistent with state privacy law as well as Commission policy stated in D.92-06-065 and D.92-11-062. CLCs are hereby given notice that they must comply with the FCC's Reconsideration Order regarding passing CPN. Furthermore, CLCs are reminded that they must comply with P.U. Code Section 2893 if they choose to offer Caller ID service.

VIII. Authority Granted

The petitioners listed in Appendix A shall be granted certificate of public convenience and necessity (CPCN) authority to commence offering competitive local exchange service effective January 1, 1996, upon compliance with the following requirements. Petitioners listed in Appendix A shall file tariffs for retail service on or before December 27, 1995, in accordance with the terms and conditions set forth in their proposed tariffs. Unless petitioners are notified otherwise, their filed tariffs shall become effective January 1, 1996.

All certificated CLCs shall be subject to all the rights and obligations under the Commission's adopted rules governing competitive local exchange service as set forth in D.95-07-054 and as further modified and expanded by today's companion decision in this docket. Any CLC which does not comply with our adopted rules for local exchange competition shall be subject to punitive sanctions including, but not limited to, revocation of its CLC certificate.

Findings of Fact

1. D.95-07-054 authorized CLC candidates to file petitions for authority to offer competitive local exchange service within the service territories of Pacific and GTEC.